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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,592

03/11/2004

Robert A. Herrmann

00-0193US02

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EXAMINER

GHALI, ISIS A D

ART UNIT

PAPER NUMBER

1611

MAIL DATE

DELIVERY MODE

01/26/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/798,592	Applicant(s) HERRMANN ET AL.	
	Examiner Isis A. Ghali	Art Unit 1611	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01/14/10 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/Isis A Ghali/
 Primary Examiner, Art Unit 1611

Continuation of 11. does NOT place the application in condition for allowance because:

Claims 1-22 and 40-41 remain rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,087,479 ('479) combined with the article "S-Nitrosothiols cause prolonged, nitric oxide mediated relaxation in human saphenous vein and internal mammary artery: therapeutic potential in bypass surgery" by Sogo et al.

The main gist of applicants' argument is that the references in combination do not teach two different polymer matrices containing two different NO adducts. In response to this argument, it is repeated that Stamler teaches both polymer matrices: one is the vascular device it self and one is the coating. Stamler further teaches NO adduct in the coating and active agent in the material of the device itself. Stamler teaches the NO can be linked to the reactive sites of the device. Therefore Stamler suggested NO in the coating and NO linked to the device, and further active agents in the material of the device itself. Sogo teaches the advantages of two specific NO adduct in treating vascular diseases. One having ordinary skill in the art would use this two adducts together for the advantage taught by Sogo. Further, one having ordinary skill in the art aware of the device taught by Stamler would have been motivated to incorporate one NO in the coating and replace the active agent incorporated in the device itself with the other NO taught by Sogo. Stamler and Sogo show that it was well known in the art at the time of the invention to use the claimed NO adducts in compositions that treats vascular diseases. It is well known that it is prima facie obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art. *In re Pinten*, 459 F.2d 1053, 173 USPQ 801 (CCPA1972); *In re Susi*, 58 CCPA 1074, 1079-80) 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); *In re Crockett*, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960). Based on the disclosure by these references that these substances are used in compositions to treat vascular disorders, an artisan of ordinary skill would have a reasonable expectation that a combination of the substances would also be useful in creating compositions having the same function. Therefore, the artisan would have been motivated to provide the two NO adducts taught by Sogo into a single device wherein each adduct is present in a different layer made of different polymer as taught by Stamler. No patentable invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients. See *In re Sussman*, 1943 C.D. 518; *In re Huellmantel* 139 USPQ 496; *In re Crockett* 126 USPQ 186.

Further, it has been held that configuration is a matter of choice which a person having ordinary skill in the art would have found obvious absent evidence that the specific configuration was significant. See *In re Daily*; 357 F.2d 669, 149 USPQ 47 (CCPA 1966). It has been also held that the use of one piece construction instead of multiple would be merely a matter of obvious engineering choice. See *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965). This is applicable here because the two NO adducts taught by Sogo would have been obviously delivered from single device of Stamler wherein one adduct is incorporated into the coating and the other is incorporated into the material of the device itself.

The subject matter as a whole as defined by the claims would have been prima facie obvious within the meaning of 35 U.S.C. 103 (a).